

COZEN O'CONNOR

Valerie Rojas (CA Bar No. 180041)

VRojas@cozen.com

601 S. Figueroa Street, Suite 3700

Los Angeles, CA 90017

Telephone: (213) 892-7965

Facsimile: (213) 784-9067

Michael D. Rafalko (PA Bar No. 200945)

(Pro Hac Vice to be Filed)

MRafalko@cozen.com

One Liberty Place

1650 Market Street, Suite 2800

Philadelphia, PA 19103

Telephone: (215) 665-4611

Facsimile: (215) 372-2360

Wendy N. Enerson (IL Bar No. 6272377)

(Pro Hac Vice to be Filed)

Wenerson@cozen.com

123 North Wacker Drive, Suite 1800

Chicago, IL 60606

Telephone: (312) 382-3100

Facsimile: (312) 382-8910

Attorneys for Defendant TRANSAMERICA LIFE

INSURANCE COMPANY

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

BRIAN GUTHRIE and GRADY LEE
HARRIS, JR., on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

TRANSAMERICA LIFE INSURANCE
COMPANY,

Defendant.

Case No.

[State Court Case No. RG21098977]

**DEFENDANT TRANSAMERICA
LIFE INSURANCE COMPANY'S
NOTICE OF REMOVAL OF CIVIL
ACTION FROM STATE COURT**

**TO THE HONORABLE JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA
AND COUNSEL OF RECORD FOR ALL PARTIES:**

PLEASE TAKE NOTICE that Defendant Transamerica Life Insurance Company (“Defendant” or “TLIC”) hereby removes this action filed in the Superior Court of the State of California for the County of Alameda (“State Court”) to the United States District Court for the Northern District of California (“District Court”) pursuant to: (i) 28 U.S.C §§ 1441 and 1446; and (ii) the Class Action Fairness Act of 2005 (“CAFA”), codified in pertinent part at 28 U.S.C. §§ 1332(d) and 1453. Defendant’s removal of this matter is based on the grounds set forth below.

I. BACKGROUND

1. On May 11, 2021, Plaintiffs Brian Guthrie and Grady Lee Harris, Jr. (collectively “Plaintiffs”) filed a putative Class Action Complaint (“Complaint”) against Defendant in the State Court, styled as *Brian Guthrie and Grady Lee Harris, Jr., on behalf of and themselves and all others similarly situated, v. Transamerica Life Insurance Company*, Case No. RG21098977 (hereinafter the “State Court Action”). A copy of the Complaint is attached as **Exhibit A** and a copy of the State Court Action Docket is attached as **Exhibit B**.

2. Defendant was served with a Summons and the Complaint on May 21, 2021. A copy of the Summons is attached as **Exhibit C**. Thus, this Notice of Removal is timely filed in accordance with 28 U.S.C. § 1446(b) as Defendant has filed this Notice of Removal within thirty days of the date Defendant was served with Plaintiffs’ Complaint.

3. Plaintiffs assert the State Court Action on behalf of themselves and a putative class of allegedly similarly situated individuals in California to whom Defendant issued a Trendsetter LB individual term life insurance policy with a 30 day right to cancel and return (hereinafter the “Trendsetter LB Policy”).

4. Plaintiffs allege that the Trendsetter LB Policy “misleadingly represented the Chronic and Critical Illness Accelerated Death Benefit ‘Riders’ as being included at ‘NO CHARGE’ [which] misleadingly portrayed the Trendsetter LB

1 policy as costing the same as a Trendsetter level premium term policy without the
2 Riders which simply was not true.” Complaint at ¶1.

3 5. Plaintiffs further allege that Defendant had a duty to disclose that it had
4 another Trendsetter policy called Trendsetter Super that allegedly “offered the same
5 basic Trendsetter Series level premium term life insurance coverage without all of the
6 ‘Riders’ for a significantly lower level premium (*i.e.*, approximately 14% to 27%
7 lower)” (hereinafter the “Trendsetter Super Policy”). *See id.*

8 6. Plaintiffs also allege that Defendant had a duty to correct its alleged
9 “materially misleading ‘NO CHARGE’ representation.” *See id.*

10 7. Plaintiffs contend that Defendant’s alleged “misleading ‘NO CHARGE’
11 representation” and its alleged failure to correct materially affected Plaintiffs and the
12 putative class’ decision whether to keep or return their Trendsetter LB policies, and
13 that as a result, Plaintiffs and the putative class have paid and will continue to pay
14 higher premiums for the same coverage under their Trendsetter LB policies than they
15 could have had under a Trendsetter Super Policy for substantially lower level
16 premiums. *See id.*

17 8. Based on these and other allegations, Plaintiffs’ Complaint purports to
18 assert the following three causes of action against Defendant: (a) “Unfair” business
19 practices in alleged violation of the Unfair Competition Law (“UCL”), Bus. & Prof.
20 Code §§17200, *et seq.*; (b) “Unlawful” business practices in alleged violation of the
21 Unfair Competition Law (“UCL”), Bus. & Prof. Code §§17200, *et seq.*; and (c)
22 “Fraudulent” business practices in alleged violation of the Unfair Competition Law
23 (“UCL”), Bus. & Prof. Code §§17200, *et seq.*

24 9. Plaintiffs seeks restitution for the amounts of “extra premiums” they paid
25 for the Trendsetter LB Policy over the premiums they would have paid for a
26 Trendsetter Super Policy. *See id.* at ¶11. Plaintiffs also seek attorneys’ fees, costs,
27 pre and post judgment interest, and all other relief the Court deems proper.
28

II. GROUND FOR REMOVAL

10. This case is removable and this Court has subject matter jurisdiction over this action under CAFA, 28 U.S.C. § 1332, 28 U.S.C. § 1441(a) and (b), and 28 U.S.C. § 1453, because (A) this is a putative class action with more than 100 putative class members, (B) there is minimal diversity among the parties, and (C) the Complaint places into controversy an amount that exceeds \$5,000,000 in the aggregate.

11. CAFA reflects Congress's intent to have federal courts adjudicate substantial class action suits brought against out-of-state defendants. To that end, CAFA provides that class actions filed in state court are removable to federal court if they meet certain basis prerequisites. Specifically, CAFA expanded federal jurisdiction over class actions by amending 28 U.S.C. § 1332 to grant original jurisdiction where the putative class contains at least 100 members; any member of the putative class is a citizen of a State different from that of any defendant; and the amount in controversy exceeds \$5,000,000 in the aggregate for the entire class, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d).

A. The Putative Class Exceeds 100 Members

12. CAFA requires that the putative class contain at least 100 persons. 28 U.S.C. § 1332(d)(5). That requirement is met here.

13. Plaintiffs bring this action on behalf of themselves and a putative class defined as:

All persons in the [sic] of California within the four-year period prior to the date of this Action was filed through the date the Class is certified who paid for, were issued, and did not cancel within 30 days after receipt a Transamerica Trendsetter LB individual term life insurance policy.

Excluded from the Class are (i) Transamerica, the officers, employees, principals, affiliated entities and directors of Transamerica at all relevant times, members of their immediate families and their legal representatives, heirs,

successors or assigns and any entity in which Transamerica has or had a controlling interest; (ii) the judges to whom this action is assigned and any members of their immediate families; (iii) governmental entities; (iv) any person that approved procedures; and (v) any Trendsetter LB policy under which a death benefit or accelerated death benefit has been paid by Transamerica.

Complaint at ¶45.

14. While Plaintiffs do not quantify the specific number of putative class members in the Complaint, a review of Defendant's records indicates there are more than 30,000 members of the putative class, as defined by Plaintiffs. *See* Declaration of Anton Harper ("Harper Decl.") at ¶5, attached as **Exhibit D**.

B. There is Minimal Diversity Among the Parties

15. The second CAFA requirement is minimal diversity, *i.e.*, that at least one putative class member must be a citizen of a different state than any one defendant. 28 U.S.C. § 1332(d)(2).

16. Plaintiff Brian Guthrie alleges that he is a citizen of the State of California. *See* Complaint at ¶12.

17. Plaintiff Grady Lee Harris alleges that he is a citizen of the State of California. *See id.* at ¶13.

18. Plaintiffs seek to represent a putative class of California individuals who were issued a Trendsetter LB Policy. *See id.* at ¶45.

19. Defendant Transamerica Life Insurance Company is an Iowa corporation with a principal place of business in Cedar Rapids, Iowa. *See id.* at ¶15. Thus, Defendant is a citizen of Iowa. *See* 28 U.S.C. § 1332(c)(1) (for diversity purposes, "[a] corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business"); *see also Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) (the "'principal place of business' is best read as referring to the place where a corporation's officers direct, control, and coordinate the corporation's activities," and in practice, the principal place of business

1 “should normally be the place where the corporation maintains its headquarters –
 2 provided that the headquarters is the actual center of direction, control, and
 3 coordination”).

4 20. Accordingly, there is minimal diversity, as the Plaintiffs are citizens of
 5 California, and Defendant is (and was at the time of the filing of the Complaint and
 6 all times intervening) a citizen of Iowa. This prerequisite of CAFA is met. 28 U.S.C.
 7 § 1332(d)(2).

8
 9 **C. The CAFA Amount in Controversy Is at Least \$5,000,000**

10 21. CAFA requires that the amount in controversy exceed \$5,000,000 for the
 11 entire putative class in the aggregate, exclusive of interest and costs. 28 U.S.C. §
 12 1332(d)(2).

13 22. Defendant avers that the amount in controversy exceeds \$5,000,000 only
 14 for the purpose of establishing subject matter jurisdiction under CAFA. Defendant’s
 15 averments and calculations are not admissions of liability or damages with respect to
 16 any aspect of this case, or to the proper legal test(s) applicable to Plaintiffs’
 17 allegations, or whether a class action is proper.¹

18 23. As the United States Supreme Court has held, a defendant’s notice of
 19 removal under CAFA “need include only a plausible allegation that the amount in
 20 controversy exceeds the jurisdictional threshold.” *Dart Cherokee Operating Co.,*
 21 *LLC v. Owens*, 135 S. Ct. 547, 554 (2014). “Evidence establishing the amount is
 22 required by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions
 23 the defendant’s allegation.” *Id.*

24 24. A plaintiff’s complaint is a court’s “first source of reference in
 25 determining the amount in controversy.” *LaCrosse*, 775 F.3d at 1202 (citing *St. Paul*

26
 27 ¹ See *LaCrosse v. Knight Truck and Trailer Sales, LLC*, 775 F.3d 1200, 1203 (9th Cir.
 28 2015) (“Even when defendants have persuaded a court upon a CAFA removal that
 the amount in controversy exceeds \$5 million, they are still free to challenge the actual
 amount of damages in subsequent proceedings and trial.”) (quoting *Ibarra v.*
Manheim Investments, Inc., 775 F.3d 1193, 1198 n.1 (9th Cir. 2015)).

1 *Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)). As such, the ultimate
2 inquiry is what amount is put “in controversy” by Plaintiffs’ Complaint, not what a
3 court or jury might later determine to be the actual amount of damages, if any. *See*
4 *Ibarra*, 775 F.3d at 1198 n.1, (defendants “are not stipulating to damages suffered” in
5 a removal petition, “but only estimating the damages that are in controversy,” because
6 “jurisdiction must be analyzed on the basis of pleadings filed at the time of removal”)
7 (internal citations omitted).

8 25. Furthermore, as confirmed by the Ninth Circuit in *Chavez v. JPMorgan*
9 *Chase & Co.*, 888 F.3d 413, 414-15, 417-18 (9th Cir. 2018), “the amount in
10 controversy is determined by the complaint operative at the time of removal and
11 encompasses all relief a court may grant on that complaint if the plaintiff is
12 victorious.” Accordingly, the amount in controversy may include all relief available
13 to Plaintiffs through the end of trial.

14 26. Based on Plaintiffs’ allegations and legal theories, the \$5,000,000 CAFA
15 amount in controversy requirement is satisfied.

16 27. As set forth above, Plaintiffs assert three causes of action for Defendant’s
17 purported violations of California’s Unfair Competition Law, Bus. & Prof. Code
18 §17200 *et seq.* These purported claims are subject to a four-year statute of limitations.

19 28. Plaintiffs contend that based on Defendant’s allegedly misleading “NO
20 CHARGE” representations and its alleged failure to correct such misleading
21 representations, Plaintiffs and members of the putative class have paid substantially
22 higher premium for the Trendsetter LB Policy than they could have paid for the same
23 coverage under a Trendsetter Super Policy. *See* Complaint at ¶33.

24 29. Plaintiffs seek restitution for the difference between the premium
25 amounts they paid for their Trendsetter LB policies and the premium amounts they
26 could have paid for Trendsetter Super policies. *See id.* at ¶11. Plaintiffs also seek
27 attorneys’ fees, costs and both pre and post judgment interest.

1 30. Defendant's records indicate that during the four-year period prior to the
2 filing of the Complaint – *i.e.* May 11, 2017 to May 11, 2021 – Defendant issued more
3 than 30,000 Trendsetter LB policies to individual policyholders in California which
4 remain fully in force. *See* Harper Decl. at ¶5.

5 31. Defendant's records also indicate that had these Trendsetter LB
6 policyholders instead purchased a Trendsetter Super Policy, the difference in amount
7 of premiums paid for these Trendsetter LB Policies versus the amount of premiums
8 that Defendant would have charged for Trendsetter Super Policies exceeds
9 \$5,500,000. *See* Harper Decl. at ¶7.

10 32. Accordingly, based on Plaintiffs' allegations and the restitution Plaintiffs
11 seeks for Defendant's purported violations of California's Unfair Competition Law,
12 the approximate aggregate premium difference placed in controversy exceeds
13 \$5,500,000.

14 33. In addition, Plaintiffs also seek statutory attorneys' fees for Defendant's
15 claimed violations.

16 34. In the Ninth Circuit, when attorneys' fees are authorized by statute, they
17 are appropriately part of the calculation of the "amount in controversy" for purposes
18 of removal. *See Fritsch v. Swift Transp. Co. of Arizona, LLC*, 899 F.3d 785, 794 (9th
19 Cir. 2018); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998)
20 ("[W]here an underlying statute authorizes an award of attorneys' fees, either with
21 mandatory or discretionary language, such fees may be included in the amount in
22 controversy."). Moreover, "a court must include future attorneys' fees recoverable by
23 statute or contract when assessing whether the amount-in-controversy requirement is
24 met." *Fritsch*, 899 F.3d at 794.

25 35. The Ninth Circuit uses a benchmark rate of 25% of the potential award
26 as an estimate for attorneys' fees. *See, e.g., Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
27 1029 (9th Cir. 1998) ("This circuit has established 25% ... as a benchmark award for
28 attorney fees."); *Glass v. UBS Fin. Servs.*, 331 F. App'x 452, 457 (9th Cir. 2009)

1 (finding 25% of total award, rather than 25% of amount actually collected by the class,
2 “was proper, and in line with Ninth circuit precedent”).

3 36. Accordingly, utilizing Defendant’s calculation of the aggregate premium
4 difference amount placed in controversy and the 25% benchmark for attorneys’ fees
5 used in the Ninth Circuit, Defendant reasonably calculates the amount in controversy
6 on Plaintiffs’ claim for statutory attorneys’ fees is at least \$1,375,000.

7 37. For all the foregoing reasons, it is evident that the \$5,000,000 CAFA
8 amount in controversy requirement is satisfied.

9 38. Accordingly, because the CAFA prerequisites are met, this case is
10 properly removable under CAFA.

11 39. Defendant expressly reserves and does not waive its right to amend this
12 Notice of Removal and/or offer evidence supporting the Court’s jurisdiction over this
13 action under CAFA or otherwise. Additionally, Defendant assumes that the proposed
14 class is as defined by Plaintiffs in the Complaint for purposes of this Notice of
15 Removal only, but expressly reserves and does not waive its position that this action
16 is not suitable for class action treatment.

17 40. In addition, nothing in this Notice of Removal is intended or should be
18 construed as any type of express or implied admission by Defendant of any fact, of
19 the validity or merits of any of Plaintiffs’ claims, causes of action, and allegations, or
20 of any liability for the same, all of which are hereby expressly denied, or as any type
21 of express or implied waiver or limitation of Defendant’s rights, claims, remedies,
22 and defenses in connection with this action, all of which are hereby fully and expressly
23 reserved.

24 **III. NOTICE TO PLAINTIFFS AND STATE COURT**

25 41. Contemporaneously with the filing of this Notice of Removal in this
26 Court, written notice of such filing will be served on Plaintiffs’ counsel of record as
27 reflected in the attached Certificate of Service. In addition, a copy of this Notice of
28

1 Removal will be filed with the Clerk of the Superior Court of the State of California
2 for the County of Alameda.

3 WHEREFORE, Defendant Transamerica Life Insurance Company respectfully
4 requests that the above-captioned action now pending in State Court be removed to
5 this United States District Court.

6
7 Dated: June 18, 2021

COZEN O'CONNOR

8
9 By: /s/ Valerie Rojas

10 Valerie D. Rojas

11 Michael Rafalko (*Pro Hac Vice to the Filed*)

12 Wendy Enerson (*Pro Hac Vice to the Filed*)

13 Attorneys for Defendant

14 TRANSAMERICA LIFE INSURANCE
15 COMPANY
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